

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	CASE NO. 1:12 CR 589
)	
Plaintiff,)	JUDGE DAN AARON POLSTER
)	
vs.)	<u>OPINION AND ORDER</u>
)	
DWIGHT ERWIN HERRERA,)	
)	
Defendant.)	

Before the Court is Defendant Dwight Erwin Herrera's "Motion Under 753 f and 28 U.S.C. 2250 for Certified Copy of Transcripts." **Doc #: 367**. This is not the first time Herrera is seeking the grand jury transcript. See Doc ##: 338 (post-judgment motion), 339 (motion to reconsider), 346 (first § 2255 motion to vacate), 356 (post-judgment motion to compel). He now seeks the grand jury transcript along with two pretrial transcripts in order to prepare yet another § 2255 motion to vacate. According to Herrera,

Due to the retroactive [Fair Sentencing Act] that is part of the Frist Step Act, chnages the statutory minimum and lowered the maximum. This retroactive⁴ effect has caused Mr. Herrera offense level to decrease. Subsequently, the transcripts of Grand Jury are needed to frame a successful 28 U.S.C. 2255.

Doc #: 367 at 1. However, neither the Fair Sentencing Act nor the First Step Act applies to Herrera. The Fair Sentencing Act, which reduced the penalties for crack-cocaine traffickers, applied only to those offenders who committed their offenses before August 3, 2010 but were sentenced after that date. *Dorsey v. United States*, 567 U.S. 260, 260 (2012). The First Step Act allows a sentencing court to retroactively apply the reduced sentences to all crack-cocaine offenders who were sentenced before August 3, 2010. *United States v. Walker*, No. 1:94-CR-5,

2019 WL 1226856, at *1 (N.D. Ohio Mar. 15, 2019); *United States v. Davis*, No. 07-CR-245S(1), 2019 WL 1054554, at *3 (W.D.N.Y. Mar. 6, 2019) Herrera committed his crack-cocaine trafficking crimes after August 3, 2010. Consequently, neither Act applies. As such, he can show no particularized need for the grand jury transcript or any transcripts. *United States v. Ferguson*, 844 F.Supp.2d 810, 829 (E.D. Mich. 2012) (citing *Dennis v. United States*, 384 U.S. 855, 869-70 (1966)).

For these reasons, the Motion, **Doc #: 367**, is hereby **DENIED**.

IT IS SO ORDERED.

/s/ Dan A. Polster April 3, 2019
Dan Aaron Polster
United States District Judge